John operates a business in Durban called Wembro Kitchen Designs (WKD). He leases his business premises from Temax Properties for an amount of R5 500 per month. The business relies on a major supplier of kitchen equipment in South Africa called Schindler Enterprises Inc.

On 1 December 2010, a customer of WKD, Eddie, became injured when he entered the business premises and fell on a granite kitchen bench after slipping on water which had not been cleaned up by John. Later that month, John received a statement from Eddie’s attorney claiming R60 000 for the medical treatment of the injuries Eddie suffered allegedly caused by John’s negligence. John pays this amount to Eddie as compensation for his injuries.

This claim has contributed to John’s cash flow problem whereby he has been unable to pay various invoices on time. As at 1 May 2011 John owes amounts of R12 500 to Temax Properties, R5 800 to Schindler Enterprises Inc and R3 000 in unpaid employee bonuses for the Christmas period. John becomes increasingly stressed from his debts and takes an overseas holiday to Europe and closes the business on 14 May 2011. He does not tell the employees when he will re-open the business.

Question 1 …/
Question 1 continued

You are asked to advise on the following:

1.1 Temax Properties would like to know whether they qualify to apply for an order of sequestration against John’s estate. If so, advise fully on the requirements they need to meet in order to be successful. (15 marks)

1.2 John’s employees would like to know how an order of sequestration against John’s estate would affect them in relation to their employment contracts. (5 marks)

QUESTION 2: 25 marks

2.1 Write a note in which you describe the categories of person who are disqualified from appointment as trustee of an insolvent estate. (15 marks)

2.2 You are approached by Ben Henderson, who was appointed as trustee in the insolvent estate of Abraham Petersen. Ben would like you to advise him on the duties he is expected to fulfill in the course of this appointment. Advise him. (10 marks)
QUESTION 3: 15 marks

3.1 Section 26 of the Constitution states that:

(1) Everyone has the right to have access to adequate housing.

(2) The state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realization of this right.

(3) No one may be evicted from their home, or have their home demolished, without an order of court made after considering all the relevant circumstances. No legislation may permit arbitrary evictions.

Critically discuss the right of an insolvent to adequate housing, as compared to this right as enjoyed by a pre-insolvent debtor.

(15 marks)